

## § 26.22

the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, subject to modifications upon good cause shown.

### HEARINGS

#### § 26.22 Public nature and timing of hearings, transcripts.

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public.

(b) *Conduct of hearing.* Hearings shall proceed with all reasonable speed. The hearing officer may order recesses for good cause, stated on the record. The hearing officer may, for convenience of the parties or in the interests of justice, order that hearings be conducted outside Washington, DC, and, if necessary, at more than one place.

(c) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter designated by the Department under the supervision of the hearing officer. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of transcripts from the reporter.

#### § 26.23 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence, unless otherwise limited by law or regulation, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, privileged, or unduly repetitious evidence shall be excluded.

Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance for the conduct of proceedings under this part. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be sustained.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of

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objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, it shall be presumed that all relevant documents are authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated.

(f) *Official notice.* All matters officially noticed by the hearing officer shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or affirmative defense unless otherwise provided by law or regulation.

#### § 26.24 Hearing officer's determination and order.

(a) *Scope of review.* The hearing officer shall conduct a *de novo* review of the administrative action to determine whether it is supported by a preponderance of the evidence unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts which justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity to respond to such evidence.

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(c) *Briefs.* Upon conclusion of the hearing, the hearing officer may request the parties to file proposed findings of fact and legal briefs. The hearing officer shall make a written determination and order based upon evidence and arguments presented by the parties. The determination shall be founded upon reliable and probative evidence. This determination and order shall be served upon all parties.

(d) *Bench decisions.* Where the parties agree and where appropriate in the judgment of the hearing officer, a bench decision will be issued.

(e) *Time period for issuance of decision.* The hearing officer shall endeavor to issue a determination within sixty days from the date of the closing of the record.

(f) *Finality of decision.* The determination and order shall be final unless a party timely appeals the decision and within forty days the Secretary decides to review the determination in accordance with § 26.25, or to have the determination reviewed by a designee.

### SECRETARIAL REVIEW

#### § 26.25 Review of determination of hearing officers.

(a) *Petition for review.* Any party may request review of the hearing officer's determination or order by filing a written petition for review with the Secretary within fifteen days of receipt of the hearing officer's determination or order. A petition for review may be granted or denied in the discretion of the Secretary or designee. This petition shall not exceed ten pages and shall specifically state the issues and basis upon which the party seeks review. This petition shall be served on all parties and the Secretary simultaneously, in accordance with § 26.15.

(b) *Briefs by opposing parties.* Opposing parties may submit briefs, not to exceed ten pages, opposing review. These briefs must be filed within fifteen days of the party's receipt of a petition for review.

(c) *Secretarial action.* Upon granting any petition for review, the Secretary or designee, may require further briefs. Secretarial review shall be limited to the factual record produced before the hearing officer. The Secretary, or des-

ignee, shall issue a written determination and shall serve it upon the parties and the hearing officer.

#### § 26.26 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within ten days of the ruling requesting certification of the ruling for review by the Secretary. Certification may be granted if the hearing officer believes that (1) it involves an important issue of law or policy as to which there is substantial ground for difference of opinion and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within ten days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, shall review a certified ruling. The Secretary, or designee, has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, or designee, the hearing shall proceed pending the determination of any interlocutory appeal and the order or ruling of the hearing officer shall be effective pending review.

### Subpart B—Hearings Pursuant to the Administrative Procedure Act

SOURCE: 61 FR 50210, Sept. 24, 1996, unless otherwise noted.

### GENERAL

#### § 26.27 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*).

#### § 26.28 Definitions.

The following definitions apply to subpart B of this part: